

### REMARKS

Prior to entry of this amendment, claims 1-40 are pending in the subject application. Claims 9-18 and 27-35 have been withdrawn in connection with the election requirement mailed on December 28, 2005. By the instant amendment, claims 1 and 37 have been amended.

Applicants respectfully request, in connection with the next Office action, the Examiner's acknowledgement and acceptance of applicants' English translation of the foreign priority document and statement that the English translation of the certified copy is accurate, filed on October 26, 2006.

#### A. Introduction

In the outstanding Office Action Made Final, the Examiner rejected claims 1, 2, 36, 39, and 40 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2002/0060704 to Suzuki ("the Suzuki reference"); rejected claims 1, 2, 36, 39, and 40 under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 6,139,132 to Yasukawa et al. ("the Yasukawa et al. reference"); rejected claims 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over the Suzuki reference in view of U.S. Patent Publication No. 2003/0122895 to Torgerson et al. ("the Torgerson et al. reference"); and objected to claims 3-8, 21-26, 37, and 38 as being dependent upon a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims.

#### B. Asserted Anticipation Rejections of Claims 1, 2, 36, 39 and 40

In the outstanding Office Action Made Final, the Examiner rejected claims 1, 2, 36, 39, and 40 under 35 U.S.C. § 102(b) as being anticipated by the Suzuki reference and by the Yasukawa et al. reference. Applicants respectfully traverse these rejections, and respectfully

submit that claim 1, as amended, is in condition for allowance for at least the reasons set forth below.

Independent claim 1 has been amended to include, *inter alia*, some limitations of claim 37, indicated as including allowable subject matter by the Examiner in the Office action of July 16, 2007, at page 7. Applicants submit that the Suzuki and Yasukawa et al. references do not teach or suggest a volumetric structure that is formed in communication with at least one surface that defines a portion of the fluid path and that is capable of varying its size in at least two directions simultaneously, as recited in amended claim 1. Accordingly, Applicants submit that claim 1 is allowable over the cited prior art, and respectfully requests that the rejection of claim 1 and claims dependent thereon be favorably reconsidered and withdrawn.

C. Asserted Obviousness Rejection of Claims 19 and 20

In the outstanding Office Action Made Final, the Examiner rejected claims 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over the Suzuki reference in view of the Torgerson et al. reference. However, Applicants respectfully submit that the Torgerson et al. reference does not supply the teachings noted above as missing from the Suzuki reference. Accordingly, applicants traverse this rejection and respectfully submits that claims 19 and 20 are allowable for at least the reasons set forth above regarding claim 1.

D. Allowable Subject Matter

Applicants note with appreciation the Examiner's indication of allowable subject matter in claims 3-8, 21-26, 37, and 38. By the instant amendment, limitations of claim 37 have been incorporated into independent claim 1, and therefore, claim 37 has been amended. Claims 3-8, 21-26, 37, and 38 depend, directly or indirectly, from independent claims 1 and 19, which are believed to be in condition for allowance. Accordingly, claims 3-8, 21-26, 37, and 38 are believed to be similarly allowable as depending from an allowable base claim.

Thus, reconsideration and withdrawal of the objection to claims 3-8, 21-26, 37, and 38 is respectfully requested.

E. Rejoinder of Withdrawn Claims

Claims 9-18 and 27-35 depend, directly or indirectly, from the pending independent claims 1 and 19. Thus, it is respectfully submitted that in the event that claims 1 and 19 are found to be allowable, withdrawn dependent claims 9-18 and 27-35 be rejoined.

F. Entry of Amendment Requested

Applicants respectfully submit that the pending claims are in condition for allowance, and that the instant amendments overcome the rejections set forth in the outstanding Office action. Accordingly, it is respectfully submitted that consideration of the instant amendment does not place an undue burden on the Examiner, and entry of the above amendment after final is respectfully requested.

G. Conclusion

The above remarks demonstrate the failings of the Examiner's arguments with respect to the outstanding rejection, and are sufficient to overcome them. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants *do not* contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

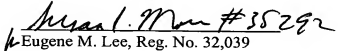
If the Examiner believes that additional discussions or information might advance the prosecution of the instant application, the Examiner is invited to contact the undersigned at the telephone number listed below to expedite resolution of any outstanding issues.

In view of the foregoing amendments and remarks, reconsideration of this application is earnestly solicited, and an early and favorable further action upon all the claims is hereby requested.

Respectfully submitted,

LEE & MORSE, P.C.

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**PETITION and**  
**DEPOSIT ACCOUNT CHARGE AUTHORIZATION**

This document and any concurrently filed papers are believed to be timely. Should any extension of the term be required, Applicants hereby petitions the Director for such extension and requests that any applicable petition fee be charged to Deposit Account No. 50-1645.

If fee payment is enclosed, this amount is believed to be correct. However, the Director is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-1645.

Any additional fee(s) necessary to effect the proper and timely filing of the accompanying-papers may also be charged to Deposit Account No. 50-1645.